

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

RUBEN M. TRUJILLO, RICHARD  
GONZALEZ, SERGIO MEZA-MEDINA,  
DANIEL B. MIMS, and RENE  
RODRIGUEZ,  
Defendants.

No. CR-13-2109-FVS-1  
CR-13-2109-FVS-2  
CR-13-2109-FVS-3  
CR-13-2109-FVS-5  
CR-13-2109-FVS-6

ORDER DENYING "MOTION  
[TO] DISMISS FOR  
VIOLATION OF DUE PROCESS  
AND STATE SOVEREIGNTY"

**RUBEN M. TRUJILLO** moves to dismiss the Superseding Indictment. He argues the United States' decision to seek his indictment under the Controlled Substances Act ("CSA"), 21 U.S.C. § 801 *et seq*, violates the Fifth, Ninth, and Tenth Amendments to the Constitution and, were he convicted, the probable punishment would violate the Eighth Amendment.

**RULE 12**

Mr. Trujillo is not arguing the Court lacks jurisdiction. Nor is he arguing the Superseding Indictment fails to state an offense. See Fed.R.Crim.P. 12(b)(3)(B). Rather, he claims the instant prosecution is unconstitutional. That being the case, the Court will construe his motion as a request for relief under Rule 12(b)(2), which states, "A party may raise by pretrial motion any defense, objection, or request

1 that the court can determine without a trial of the general issue."

2 **NO FUNDAMENTAL RIGHT TO GROW MARIJUANA**

3 Mr. Trujillo argues he has a fundamental right to grow marijuana  
4 for medical purposes, and this right is protected by the substantive  
5 component of the Due Process Clause of the Fifth Amendment. Virtually  
6 the same argument was considered and rejected by the Ninth Circuit in  
7 *Raich v. Gonzales*, 500 F.3d 850 (9th Cir.2007) (hereinafter "*Raich*  
8 *II*"). Writing for the court, Judge Pregerson concluded, "[F]ederal  
9 law does not recognize a fundamental right to use medical marijuana  
10 prescribed by a licensed physician to alleviate excruciating pain and  
11 human suffering." *Raich II* is binding authority. Thus, the Executive  
12 Branch's decision to proceed with the prosecution does not deprive Mr.  
13 Trujillo of a fundamental right.

14 **A 10-YEAR MANDATORY MINIMUM PRISON SENTENCE WOULD NOT VIOLATE THE**  
15 **EIGHTH AMENDMENT**

16 The Eighth Amendment has been interpreted to forbid "'extreme  
17 sentences that are grossly disproportionate to the crime.'" *United*  
18 *States v. Williams*, 636 F.3d 1229, 1232 (9th Cir.2011) (quoting *Graham*  
19 *v. Florida*, 560 U.S. 48, 60, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010)  
20 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 1001, 111 S.Ct. 2680, 115  
21 L.Ed.2d 836 (1991) (Kennedy, J., concurring))). "There are two ways  
22 to succeed on a proportionality claim." *Williams*, 636 F.3d at 1232.  
23 One way is to show the disputed sentence is disproportionate "'given  
24 all the circumstances in the case.'" *Id.* (quoting *Graham*, 560 U.S. at  
25 59, 130 S.Ct. 2011). Another way "is to show that an entire class of  
26

1 sentences is unconstitutionally disproportionate given the severity of  
2 the sentence, the gravity of the crime, and the type of offender."  
3 *Id.* at 1233. It is unclear whether Mr. Trujillo may bring an Eighth  
4 Amendment challenge at this stage in the proceedings. If he is, the  
5 only type of challenge he might be able to bring would be the second  
6 type. That is to say, the only type of challenge he might be able to  
7 bring would be one alleging a mandatory term of ten years imprisonment  
8 is categorically disproportionate to either of the crimes which he is  
9 alleged to have committed. The Ninth Circuit recently considered a  
10 similar argument in *United States v. Shill*, 740 U.S. 1347 (9th  
11 Cir.2014). As in this case, the issue was whether a ten-year  
12 mandatory minimum sentence categorically violated the Eighth  
13 Amendment. The Ninth Circuit explained the Supreme Court had only  
14 applied categorical analysis in *Graham v. Florida*, 560 U.S. 48, 130  
15 S.Ct. 2011, 176 L.Ed.2d 825 (2010), and *Miller v. Alabama*, ---U.S.  
16 ---, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). "Both *Graham* and  
17 *Miller*," said the Ninth Circuit, "expressly turned on two factors not  
18 present here: a juvenile offender and a sentence of life in prison  
19 without parole." *Shill*, 740 F.3d at 1356. Neither circumstance was  
20 present in *Shill*. Mr. Shill was an adult and he had received a  
21 mandatory ten-year prison sentence. That being the case, the Ninth  
22 Circuit could see no reason to engage in categorical analysis:

24 Neither *Graham* nor *Miller* suggest that a ten-year mandatory  
25 prison term is the type of sentencing practice that requires  
26 categorical rules to ensure constitutional proportionality.  
Shill is not a juvenile, and his ten-year mandatory minimum

1 sentence is in no way akin to the death penalty. Thus, we  
2 refuse to apply the categorical approach to Shill's ten-year  
3 mandatory minimum sentence.

4 740 F.3d at 1357. Unlike Mr. Trujillo's case, *Shill* involved a  
5 serious sexual offense. However, in refusing to employ categorical  
6 Eighth Amendment analysis, the Ninth Circuit attached no significance  
7 to the nature of the crime Mr. Shill had committed. Only two  
8 circumstances mattered. Mr. Shill was not a juvenile and he had not  
9 been sentenced to life in prison without the possibility of parole.  
10 As in *Shill*, neither of those circumstances is present in Mr.  
11 Trujillo's case. Consequently, a potential ten year prison sentence  
12 would not be categorically disproportionate in violation of the Eighth  
13 Amendment.

14 **FEDERAL REGULATION OF MARIJUANA DOES NOT VIOLATE THE NINTH**  
15 **AMENDMENT**

16 The Ninth Amendment states, "The enumeration in the Constitution,  
17 of certain rights, shall not be construed to deny or disparage others  
18 retained by the people." Mr. Trujillo vaguely argues federal  
19 regulation of marijuana infringes powers granted to the people of the  
20 State of Washington under the Ninth Amendment. His argument finds no  
21 support in Ninth Amendment jurisprudence. Federal appellate courts  
22 agree the Ninth Amendment "has not been interpreted as independently  
23 securing any constitutional rights for purposes of making out a  
24 constitutional violation." *Schowengerdt v. United States*, 944 F.2d  
25 483, 490 (9th Cir.1991). To the contrary, the Ninth Amendment  
26 provides a "'rule of construction,'" *Jenkins v. C.I.R.*, 483 F.3d 90,

1 92 (2d Cir.2007), or a "rule of interpretation." *Goodpaster v. City*  
2 *of Indianapolis*, 736 F.3d 1060, 1075 (7th Cir.2013) (internal  
3 punctuation and citation omitted).

4 **TENTH AMENDMENT**

5 Mr. Trujillo argues the Executive Branch of the federal  
6 government has commandeered the efforts of state law enforcement  
7 officers in order to subvert a State's decision to decriminalize the  
8 use of marijuana for medical purposes. In Mr. Trujillo's opinion,  
9 this sort of conduct is forbidden by the Tenth Amendment. He is  
10 mistaken. See *Raich II*, 500 F.3d at 867 and n. 17. The Ninth Circuit  
11 has repeatedly rejected Tenth Amendment claims challenging federal  
12 regulation of marijuana for medical purposes. See *United States v.*  
13 *Firestack-Harvey*, CR-13-24-FVS, 2014 WL 1744255 (E.D.Wash. April 30,  
14 2014) (listing cases).

15 **DEPARTMENT OF JUSTICE GUIDELINES**

16 The Department of Justice has issued memoranda that provide  
17 guidance to United States Attorneys who are charged with the  
18 responsibility of enforcing the Controlled Substances Act in states  
19 that allow the use of marijuana for medical purposes. See, e.g.,  
20 *United States v. Canori*, 737 F.3d 181, 183-84 (2d Cir.2013)  
21 (describing the "Ogden" and "Cole" memos). However, Mr. Trujillo has  
22 cited no authority supporting the proposition that such memos create  
23 enforceable rights.  
24

25 **IT IS HEREBY ORDERED:**

26 Ruben Trujillo's "Motion [to] Dismiss for Violation of Due

1 Process and State Sovereignty" (**ECF No. 280**) is **denied**.

2 **IT IS SO ORDERED.** The District Court Executive is hereby  
3 directed to enter this order and furnish copies to counsel.

4 **DATED** this 24th day of July, 2014.

5  
6 s/ Fred Van Sickle  
Fred Van Sickle  
7 Senior United States District Judge  
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